



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

[Docket DARS-2018-0056]

RIN 0750-AK18

**Defense Federal Acquisition Regulation Supplement: Small
Business Set-Asides for Architect-Engineer and Construction
Design Contracts (DFARS Case 2018-D057)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 regarding set-asides for architect-engineer and construction design contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D057, using any of the following methods:

- o *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Search for "DFARS Case 2018-D057." Select "Comment Now" and follow the instructions provided to submit a Comment. Please include "DFARS Case 2018-D057" on any attached documents.

- o *Email:* *osd.dfars@mail.mil.* Include DFARS Case 2018-D057 in the subject line of the message.

- o *Fax:* 571-372-6094.

- o *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer D. Johnson, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571-372-6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 2804 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232), which amends the thresholds at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in

connection with military construction projects or military family housing projects. Section 2804 requires these acquisitions to be set aside for small business if valued at less than \$1,000,000. Section 2804 also removes the prohibition on setting aside these acquisitions; as a result, these acquisitions may now be set aside for small business, if valued at \$1,000,000 or more.

II. Discussion and Analysis

This rule proposes to delete paragraph (2) at DFARS 219.502-1. This paragraph prohibits small business set-asides of acquisitions for architect-engineer services for military construction or family housing projects valued at \$400,000 or more. The remaining paragraphs would be combined into a single unnumbered paragraph. In addition, this rule proposes to revise the dollar value at DFARS 219.502-2, paragraph (a)(iii), from \$400,000 to \$1,000,000. This paragraph requires acquisitions for architect-engineer services for military construction or family housing projects to be set aside for small business below a certain dollar value.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This proposed rule is not expected to be an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule impacts a small number of small entities.

However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to revise the DFARS to implement section 2804 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232), which amends the thresholds at 10 U.S.C. 2855 for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects.

The objective of this rule is to implement statutory changes to 10 U.S.C. 2855 by removing the restriction on small business set-asides for these acquisitions and increasing the threshold for small business set-aside to \$1,000,000. The legal basis for the rule is section 2804 of the NDAA for FY 2019.

The rule applies to contract awards for architect-engineer services, including construction design. Data from the Federal Procurement Data System shows that, during FY 2017, DoD awarded 232 contracts for architect-engineer services to 187 unique small entities. In FY 2017, DoD awarded 41 contracts for architect-engineer services valued at more than the prior threshold of \$400,000 and less than the new threshold of \$1,000,000. This rule proposes to require future contracts in this range to be awarded pursuant to FAR part 19 set-aside procedures. DoD also awarded 290 contracts for architect-

engineer services valued at more than \$1,000,000. This rule proposes to make it possible for future contracts at those dollar values to be awarded pursuant to part 19 set-aside procedures. There are more than 33,000 small entities listed in the Small Business Administration's Dynamic Small Business Search that provide architect-engineer services. Of these entities, approximately 300 could benefit from this rule.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would meet the requirements of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2018-D057), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 219

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 is proposed to be amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise section 219.502-1 to read as follows:

219.502-1 Requirements for setting aside acquisitions.

Do not set aside acquisitions for supplies which were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program.

219.502-2 [Amended]

3. Amend section 219.502-2, in paragraph (a)(iii), by removing "of under \$400,000" and adding "under \$1,000,000" in its place.

[FR Doc. 2018-26308 Filed: 12/3/2018 8:45 am; Publication Date: 12/4/2018]